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ABSTRACT

This paper is part of a collection of 54 papers from the 48th annual conference of the Education Law Association held in November 2002. It discusses the role that states' constitutional mandates play in education finance. It examines why, when one of the few constitutionally shared responsibilities of all 50 states is the provision of education, court outcomes on education finance vary so drastically. In particular, the paper reports on a study that focused on two questions: (1) In cases in which justices seem to have ruled contrary to the state education clause, what kinds of interpretive rationales have they provided? and (2) In what ways might other constitutional considerations, such as narrowly or broadly framed preambles, governmental responsibility parameters, or equal-protection clauses, have influenced outcomes, both rulings in line with education clauses and those seemingly contrary to those clauses? The study used a statistical cluster analysis of broad factors across the 50 states; an analysis of other factors, particularly the state education clause; and an examination of 18 cases. Findings show that outcomes of cases depended largely on the general interpretive approach of the justices hearing the cases. These findings, however, are preliminary and suggest further research. (Contains 1 figure, 3 tables, and 39 references.) (WFA)

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Education Clauses, State Contexts, and Finance Case Outcomes: Towards a Holistic Constitutional Interpretation.

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EDUCATION CLAUSES, STATE CONTEXTS, AND FINANCE CASE OUTCOMES:

TOWARDS A HOLISTIC CONSTITUTIONAL INTERPRETATION

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A paper presented at the 48th Annual Conference of the
Education Law Association
New Orleans, November 14-16, 2002.

Introduction

The provision of education in the United States has a long, inequitable history, replete with both unintentional and overt racial discrimination, economic self-interest, and political laissez faire. In 1954, *Brown v. Board of Education* established in the national consciousness the fiscal and racial underpinnings of unequal educational opportunity that have characterized American schooling; in many ways, little has changed since then. Racially isolated, under-funded schools remain common (Jenks & Peterson, 1991; Kozol, 1991; McDermott, 1999; Orfield & Ashkinaze, 1991; Wilson, 1987). Even when race is not an issue, economic self-interest couples with disparity between property-rich and property-poor school districts to create a cycle of inequitable educational provision (McDermott, 1999).

As a result, poorer children often attend schools with more students per class, less qualified teachers, and fewer programs—all of which correlate with lower outcomes. In fact, evidence continues to mount demonstrating that money matters in children's educational provision (Grissmer, Flanagan, Kawata, & Williamson, 2000; Grissmer, Flanagan, & Williamson, 1997; Hedges, Laine, & Greenwald, 1994; Wenglinsky, 1997). Nevertheless, countless schools cannot provide adequate educational opportunities, for a variety of reasons. The wealthy generally do not want their taxes redistributed to poor districts, creating a tension between economic self-interest and the broader state and national interests of having an educated populace. In states whose gross product and personal income is limited, revenues within the state simply cannot provide the kind of education many children need. Equal educational opportunity faces race, class, and budgetary obstacles, a fact that has made legislatures loath to propose drastic changes to educational provision except when under court order (Kozol, 1991; Ringquist & Garand, 1999; Rothstein, 2000; Wood & Thompson, 1996).

The complex issues and interests involved in education finance have resulted in three decades of litigation in states across the country, but despite strikingly similar claims in the suits, state supreme court outcomes are highly unpredictable (Lundberg, 2000; Sparkman, 1990; Swenson, 2000; Wood & Thompson, 1996). Whether assessed from the point of view of the litigation approach plaintiffs use (Thro, 1994; Underwood & Vergstegen,

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1990; Vergstegen & Whitney, 1997a) or accounting for the strength of states' constitutional mandates for educational provision (Lundberg, 2000; Ratner, 1985; Swenson, 2000; Thro, 1993), patterns of outcomes are only weakly associated with the factors that traditional legal interpretation would have us examine. In the end, results seem inexplicable, with some states simply choosing to uphold their finance systems, others electing to overturn them. This research examines more closely the role that states' constitutional mandates have played in these varying outcomes, seeking to understand why, in a country where one of the few constitutionally shared responsibilities of the fifty states is the provision of education, court outcomes vary so drastically, even controlling for constitutional mandates. In particular, the work focuses on two guiding questions:

- In cases where justices seem to have ruled contrary to the state education clauses, what kinds of interpretive rationales have they provided?
- In what ways might other constitutional considerations—such as narrowly or broadly framed preambles, governmental responsibility parameters, or equal protection clauses—have influenced outcomes, both rulings in line with education clauses and those seemingly contrary to those clauses?

Methods and Data

Answering questions about states' varied education finance rulings requires assessing the contexts within which state cases have been tried. High tax capacities could enable states that are otherwise conservative to provide equitable funding. Conversely, liberal citizen and government values could encourage states with low capacities to tax at high rates to provide more funding. Racial divides persistent in geographic boundaries could deter legislatures from allocating resources away from the suburbs into areas of need, and urban and rural areas could muster differential legislative clout, tipping the balance for one or the other in a funding formula. Other measures pertinent to education also vary widely between states. Education in Utah, with an average of two people per square mile, demands different considerations than in New Jersey, with 1000 people per square mile (SPPQ, various). While as a nation we spend more of our GNP on education than many other OECD nations, the range of expenditures among our *individual* states is similar to that among all OECD nations. Controlling for available resources per capita *and* per child, individual states exhibit an even wider variation of 5% to 30% compared to other nations' 13% to 34%. The overall spending in the states when controlling for available resources and numbers of children educated is much lower than in other countries, with 36 states spending less than the average spending per pupil in other countries—a much different picture than the average national-level data paints (NCES, 1996a, indicators 33a and 33b). When considering educational equity and adequacy issues, assessing state-level issues is paramount.

To sort out some of states' shared and divergent qualities, the methodology included three steps: 1) A statistical cluster analysis of broad factors across the fifty states, including general economic, sociological, and political indicators; 2) an overlay of other salient education finance case indicators on each socio-political clustering to facilitate selection of comparable states for more in-depth analysis of their cases; and 4) development of eighteen state case vignettes on litigation that apparently was decided on bases other than education clause language to illuminate how courts have used their constitutions within their socio-political contexts to uphold or overturn their finance systems.

The first step was based in cross-state political science research models, assessing states' economic, political, and sociological domains in order to understand the contexts within which state court justices worked as they delivered their decisions (Beavers & Waltz, 1998; Berry, Ringquist, Fording, & Hanson, 1998, 1999; Brace & Hall, 1999; Erikson, Wright, & McIver, 1989; Langer, 1999; Ringquist & Garand, 1999; Weber & Brace, 1999). This step in the methodology helped ensure that comparisons between states would be apt.

A variety of measures exist to capture social, political, and economic conditions within states (Barrilleaux, 1999; Berry et al., 1998; Erikson et al., 1989; Gray & Lowery, 1999; Langer, 1999; Wright, Erikson, & McIver, 1987). In recent years, data sources have enabled construction of measures over time (see, e.g. Beavers & Waltz, 1998; Berry & Fording, 1997; Berry et al., 1998; Langer, 1999). Many outcomes of interest in political science, such as election results, can be represented as dichotomous variables, making event history analysis a good means of determining what time-sensitive factors shaped outcomes (Berry, 1994; Brace, 2000; Willet & Singer, 1991; Yamaguchi, 1991). However, the method is imperfectly suited for finance litigation research. Case rulings are difficult to categorize discretely because decisions reflect a spectrum of court opinions rather than a clear set of wins or losses, making event history analysis and two-stage selection bias models inappropriate (Yamaguchi, 1991). Regression models are ill-fitted for the same reason. Further, regression has been shown to be unreliable with time-sensitive data, frequently predicting false significance (Berry, 1994).

Yet, exploring state-level differences necessitates an awareness of states' interactions with larger national trends (Brace, 1993). To situate states' socio-political and economic contexts within a broader national frame, a statistical clustering model established groupings of states at two different time periods during the history of finance litigation—one in the 1970's when states saw their first rounds of finance cases, and one in the 1990's when states were moving into litigation on grounds of adequacy (Enrich, 1995; Thro, 1994; Vergstegen & Whitney, 1997a). The models included nine variables grouped according to concepts related to the context of finance equity cases:

- ***General State Fiscal Inequity***: Regressive tax schemes and large disparity in levels of personal income would represent a context unfavorable to finance equity.
- ***Ideological Values***: Low tax effort and conservative ideologies would exist in contexts less favorable to finance equity.
- ***Educational Outcomes***: Historically strong commitment to educational provision would be reflected in low high school dropout rates and high achievement scores.
- ***Educational Challenge***: High proportions of African American students or students in poverty could interact with state contexts to lower educational outcomes; in other states a commitment to equity could overcome these historical challenges.
- ***Population Density***: As a general control, the measure accounts for the vast geographic differences that impact educational provision.

Each major category included one time-series indicator and one cross-sectional indicator. The data were read into SPSS 10. Descriptive analyses provided standardized Z-score statistics for each variable. Two K-means cluster

models, one for each period, were run, including complete iterations, ANOVA tests, and cluster information for each state.

Overlay of Education Finance Case Facts to Pair States

Once the cluster analyses created groups of states with similar socio-political and economic contexts, the next step of the project was to assess states' education finance litigation contexts. Data for this portion of the study included the basic elements of the legal model of case interpretation: information on education spending, case approaches and outcomes, and state constitutional language. Within this layer of the methodology, the most critical factor in the study was the state education clause. Using the most cited classification of state constitutional guidelines for education clauses, each state was assigned its rating from the four-category system to assess the strength of the state clauses (Ratner, 1985; Thro, 1993). In that analysis, the lowest level of education clause only compels a state to establish an education system. The second level imposes some minimum standard, such as that there be a system, or that it be thorough and/or efficient. The next highest level adds some level of purpose to the clause, such as urging the legislature to use "all means" to establish the appropriate system, often in conjunction with a preamble stating why the state should interest itself in education. The fourth level makes education among the most important of state functions.

In addition, a record of states' equal protection clauses formed part of the overlay analysis. The clauses were classified according to four non-mutually exclusive types, with 1 equaling broad respect for individual human rights and pursuit of pleasure, 2 equaling clauses that offer a technical assertion that laws are applied equally, 3 equaling clauses noting the government's strong duty to protect individual property, and 4 equaling clauses that focus on why government is created and where power is vested.

To select states for analysis, each cluster grouping for each period was sorted according to its case outcome and its education clause strength, producing an ordered list of cases within a cluster period where the highest level of constitutional mandate in a case which upheld the finance system ranked next to the case with the lowest constitutional mandate in an overturned system. Other variables were examined to ensure maximum comparability between the conditions the states faced in deciding the cases. These two cases in each cluster for both periods were selected for comparison. Comparing these cases offers great potential for understanding how constitutional mandates affected—or did not affect—different decisions.

ANALYSIS OF STATISTICAL CLUSTERS

General Cluster Descriptions[1]

The five conceptual areas selected for clustering the states echoed familiar regional differences (Figure 1). The Deep South cluster captured the most ideologically conservative states, whose tax efforts were the second lowest in the nation. Membership in the South Central cluster included states such as Texas, Oklahoma, and Missouri, but also extended to include other southern states such as Florida and West Virginia. These states

[1] Clusters were remarkably stable over time, with very few states shifting from the 1970's to the 1990's. Cluster characteristics varied slightly, most notably with states becoming more conservative in nearly every cluster.

followed as second most conservative, exhibiting the least tax effort. Both sets of southern states followed similar patterns of economic equity, with their income inequity measures high compared to other states. They evidenced low population densities. Although both clusters exhibited low educational outcomes, the standardized educational score from college-going tests was by far lower in the Deep South states. Similarly, although both evidenced high proportions of their children in poverty, states in the Deep South clustered around much higher proportions of students of African American background than states in any other area. In terms of an historical disfranchisement to access quality education, these states are clearly different from other states in the nation.

"Midwestern" captured most of the states geographically in the Midwest, although Virginia and New Hampshire clustered with this group, as did several western states. The shared qualities of these states reflected a middle ground in the first period, with ideologies falling between other groups', economic equity measures reflecting a mix of generally well-distributed income coupled with regressive taxation. They shared low rates of poverty and African American population and population density, and high levels of high school completion and educational achievement as measured by the SAT and ACT.

The Eastern Seaboard cluster reflects distinct qualities in nearly every conceptual area in the analysis. Its ideology is politically liberal to a much greater degree than in other clusters. However, its equity measures do not follow suit, with income equity towards the middle of the spectrum coupled with regressive taxes. Low rates of educational challenge produce mixed outcomes in these states. High proportions of students complete high school, but achievement is nearly as low as in South Central states. This grouping of states also evidences by far the densest population.

Finally, several states clustered independent of geographic considerations, creating a mix of states with moderate population density. Although the cluster shares more similarities with the Midwest than with any other grouping, its dissimilarities are significant. Ideologically, these states are strongly liberal, including strong tax efforts. They also are the only group of states that exhibits strong income equity coupled with progressive tax rates. Educational outcomes are moderate, with few challenges.

Figure 1: 1990's Clusters of Socio-Political Factors

Cluster 1: Low ideology, equity, outcomes, density; high challenge
Cluster 2: High ideology, density; mod. equity, challenge; mixed outcomes
Cluster 3: Mixed ideology, challenge; mod. density; low equity, outcomes
Cluster 4: Mixed ideology, equity; high outcomes; low challenge, density
Cluster 5: Mod. ideology, outcomes, density; high equity; low challenge

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FINDINGS

Judicial Power to Select Interpretive Lenses

Across the eighteen cases, one fact was clear: nearly any one of the rulings could have been decided in other ways. The frequency with which justices "rejected" or "accepted" precedents, building cases from their preferences, was sobering. Since precedents pointed justices down a particular path of inquiry, the starting point determined the finish to the case. Citing Kentucky yielded a ruling for a well-defined educational system to be provided for all students; citing Illinois closed the case in favor of whatever system the legislators decided upon, no matter its relationship to the constitution or to what is best for the general public. Similarly, tracking down historical inequities and applying their existence to the framers' intent gave an anachronistic rationale to a decision, one that favored the state. Starting from a sense of the values inherent in providing an education for children produced a ruling that sought a better educational system.

Interwoven with justices' selection of precedent was the general interpretive approach they selected. Within this sample, the interpretive styles suggested four main lenses justices applied: 1) a search for whether the historical intent of the framers was for equal educational spending, 2) a search for a literal mandate to provide equal or adequate education; 3) an integrated analysis of the case and the larger constitutional and sociological contexts; 4) an analysis of what most people would consider the plain language of the constitution to demand.

Table 1 offers a classification of the cases in the sample. It is striking that the pattern of wins and losses directly corresponds to the interpretive lens the justices applied. With the exception of New Hampshire's addition of citing its historical relationship with education as additional information in its integrated analysis, all the historical and all the literal approaches ruled for the state. On the other hand, justices who opted for either a plain language reading or a holistic analysis of the case facts in conjunction with the states' and children's best general interests produced rulings for plaintiffs. Of course, two caveats are important to keep in mind in viewing this finding. First, these thoughts on interpretive lenses are preliminary, arising not from a systematic analysis of the cases from the outset, but rather emerging as a suggestive area for further research. Second, perhaps the utility of pursuing a classification system of case decisions is minimal: it might be expected that the more general readings of the case facts and constitutions would support wins, and the more discrete approaches such as a search for precise definitions or explicit historical language would produce the ends they do. Thus, this finding may be the outcome of an untapped ideological or procedural quality of different courts, of little more use than the case outcomes themselves.

Table 1: Interpretive Lenses for Cases

State	Outcome	Period	Ed. Clause Classification	Interpretive Lens
Maryland	Lost	1	2	Historical
Rhode Island	Lost	2	3	Historical
!llinois	Lost	2	4	Historical
Oklahoma	Lost	1	1	Literal
Virginia	Lost	2	2	Literal
Georgia	Lost	1	4	Literal
Maine	Lost	2	4	Literal
Alabama[a]	Mixed	2	1	.
Massachusetts	Won	2	1	Holistic
Vermont	Won	2	1	Holistic
Tennessee	Won	2	1	Holistic
North Carolina	Won	2	2	Holistic
Wyoming	Won	1	2	Holistic
Washington[a]	Won	1	4	Holistic
Connecticut	Won	1	1	Holistic[b]
New Hampshire	Won	2	1	Holistic/Historical
West Virginia	Won	1	2	Holistic/Plain Lang.
Montana	Won	1	2	Plain Language

[a] Alabama never ruled on any substantive issues, only on procedural questions about the case.
[b] Connecticut's reasoning is among the least developed; however, their lengthy critique of the *Rodriguez* decision is based on more holistic grounds, hence its classification.

Education Clauses

A premise of the design of this study was that constitutional language should make a difference in court decisions. On first examining the clauses, it became evident that several had a rhetorical quality that was not captured in the standard classification systems assessing establishment requirements. However, separating education clause qualities into "establishment" and "rhetoric" did not lend any insight into rulings. A different consideration did, though, emerge from the reading of the cases. State education clauses seem to function more holistically with the broader constitution than previous classifications have assumed. At times courts cite the fact that education falls within the bill of rights section, making it a fundamental right; at other times they note it forms a part of the function of government section, making it a primary duty of the state. When the content and structure of other pertinent parts of the constitution are taken into account, clauses can be classified into "high," "medium," and "low," reflective of their strength for educational quality or equity. As part of the cross-state analysis, each of the clauses from the case states was reclassified to account for the spirit of the broader constitution (Table 2).

Table 2: Education Clause Classifications and Outcomes

State	Outcome	Ed. clause reclass.	Thro class.	Litigation Period	Cluster
Alabama	Mixed	Medium	1	2	Deep South
Connecticut	**Won**	Low	**1**	1	Eastern
Georgia	Lost	Low	**4**	1	Deep South
Illinois	**Lost**	High	4	2	South Central
Maine	Lost	Low	**4**	2	Other
Maryland	Lost	Medium	2	1	Other
Massachusetts	Won	High	**1**	2	Eastern
Montana	Won	High	2	1	Other
New Hampshire	Won	High	**1**	2	Midwest
North Carolina	Won	High	2	2	Deep South
Oklahoma	Lost	Low	1	1	South Central
Rhode Island	Lost	Medium	**3**	2	Eastern
Tennessee	**Won**	Low	**1**	2	South Central
Vermont	**Won**	Low	**1**	2	Other
Virginia	Lost	Medium	2	2	Midwest
Washington[a]	Won	High	4	1	Midwest
West Virginia	Won	Medium	2	1	South Central
Wyoming	Won	High	2	1	Midwest

In Table 2, states that ruled counter to what would be predicted by Thro's constitutional classification system are bolded. In the holistic approach since language that ranked "medium" might be predicted equally to rule for either party, those cases were not considered. Similarly, in the traditional classification system the states with the standard "2" rating are excluded. With a holistic classification, only four states ruled contrary to what was predicted; with the traditional classification system, twice as many did. Table 3 compares the outcomes for each of the classification systems.

Table 3: Comparison of Outcomes and Education Clause Classifications

Thro classification			Holistic Reclassification		
	Won	Lost		Won	Lost
Strongest	1	3	High	6	1
Strong	.	1	Medium	1	3
Establishment	4	2	Low	3	3
Weak	5	1			

In this comparison, it is important to recall that states were selected for the sample precisely because they ruled contrary to their education clause as traditionally classified. Hence, the mismatch between education clauses and outcomes in the Thro classification would be expected to be large, as it is. A holistic interpretation of the education clause, including its rhetorical qualities and the context of the entire constitution, corrects this mismatch and produces a more systematic relationship between case outcomes and constitutional guidelines. When viewed in these terms, the clauses evidence a clearer relationship between wins and losses than earlier classification schemes have. Whether the "spirit" of constitutions as they relate to education better reflect citizen values is worthy of further examination.

CASES INCLUDED IN THE STUDY

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Brown v. Board of Education, 347 U.S. 483 (1954)
San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973)

Alabama

Opinion of the Justices, 624 So. 2d 107 (Ala. 1993)
Pinto v. Alabama Coalition for Equity, 662 So. 2d 894 (Ala. 1995)
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Arizona

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California

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Colorado

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Connecticut

Horton v. Meskill, 172 Conn. 615, 376 A.2d 359 (1977)
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Florida

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Georgia

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Illinois

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Louisiana

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East Jackson Public Schools v. State of Michigan, 133 Mich. App. 132, 348 N.W.2d 303 (1984) (Court of appeals only)

Minnesota
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Missouri
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Montana
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